

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SARAH GRINENKO,

Plaintiff,

vs.

OLYMPIC PANEL PRODUCTS, LLC, et al.,

Defendants.

NO. C07-5402 BHS

JOINT STATUS REPORT AND
DISCOVERY PLAN

Pursuant to the Court's Minute Order Regarding Initial Disclosures and Joint Status Report, the parties submit this Joint Status Report.

1. What is the statutory jurisdictional basis?

A. Plaintiff's Position: Plaintiff served Defendant Olympic Panel with litigation, discovery requests and jury demand in Mason County Superior Court on July 9, 2007. Plaintiff provided courtesy copy of an Amended Complaint to Defendant OPP counsel via fax and subsequently served the same on August 8, 2007 to Defendant OPP at 12:55 pm. Defendant OPP answered the original Complaint on August 8, 2007 and filed an Amended Answer on August 24, 2007. Defendant Union Association joined in removal for the same grounds given by Defendant Olympic Panel on August 20, 2008 as well as under claim of the Labor Management Relations Act and asserted that the Court also had supplemental jurisdiction as to the other bases (sic) for relief in section 2, paragraph d.

1 Non-management defendants not represented by counsel for Olympic Panel or Union
2 Association filed Answers on our about October 29, 2007 and November 6, 2007.

3 The matter is properly removed as Plaintiff is seeking Title VII damages and the case
4 does allege some issues pertaining to the duty of fair representation by this Union. The
5 Defendant individuals did not, following service and appearance move to remand the
6 matter in whole or in part back to State Court. Jurisdiction and Venue are asserted as
7 proper against all Defendants herein. Plaintiff respectfully points out that this case, while
8 having some Federal claims, is not exclusively based on Federal claims.

9 B. Defendants' Position: This case was originally filed in State Court and was
10 removed to the U.S. District Court by defendant Olympic Panel Products ("OPP") on
11 August 6, 2007. The facts supporting removal are set forth in OPP's Notice of Removal.
12 The Notice of Removal is based on 28 USC § 1331 and § 1441. In her complaint, the
13 plaintiff alleges claims for violation of Federal Civil Rights Act, Title VII of the Civil
14 Rights Act as Amended.

15 On August 21, 2007, defendant Woodworker's Lodge Local W-38 of the International
16 Association of Machinists filed a separate Petition for Removal. The factual basis for
17 this Removal Petition is found in its Notice of Joinder in Removal of Civil Action. These
18 defendants – Local Lodge 38, its president Eric Dobson and his wife Debbie Dobson are
19 hereinafter called "Local Lodge". The jurisdictional basis asserted by Local Lodge is the
20 Labor Management Relations Act, 29 USC § 1481, *et. seq.* The Court has supplemental
21 jurisdiction over all plaintiff's claims against them and each of the individual named
22 defendants pursuant to 28 USC § 1367(a). There is no jurisdictional basis for the
23 individual defendants, Randy Ward, Sean Scupine, Shane Scupine, Ray Doyle, Robert
24 Pierson and Brandon Thompson.

25 C. Olympic Panel Products is a Washington corporation with its principal place of business

1 in Shelton, Washington.

2 **2. Is there any other jurisdiction where this cause of action might have been**
3 **brought? If so, why is the Western District of Washington the preferred place of filing?**

4 A. Plaintiff's Position: This case could have been litigated in Mason County,
5 Washington in Mason County Superior Court and the Defendants and each of them have
6 selected the Federal Court, Western District of Washington for this litigation and this
7 Court has jurisdiction and venue for this action.

8 B. Defendants' Position: Plaintiff resides in Mason County, Washington. Local
9 Lodge and OPP have their principal places of business in Shelton, Mason County,
10 Washington. All of the individually named defendants reside or work in Mason County,
11 Washington. The case having been properly removed, the proper forum is the U.S.
12 District Court for the Western District of Washington at Tacoma.

13 **3. What is the nature and complexity of this case?**

14 A. Plaintiff's Position:
15 Plaintiff is not anticipating that this fact intensive case will be complex in presentation.
16 Plaintiff does anticipate that the discovery process in this matter will be extremely
17 complex and that it will likely require Court attention. Consideration is requested in the
18 timing and sequence of discovery and it is already established that Defendants, and each
19 of them, have been participating in their own telephone conferences to discuss this case.
20 The difficulties in this litigation and in discovery will be the number of attorneys
21 involved and the anticipated attempts to limit or prevent discovery by defense as well as
22 potential compounding of discovery. Plaintiff requests that the Defendants set forth some
23 agreed upon time lines for issuance of and responses to discovery and for scheduling of
24 depositions in tandem to avoid unnecessary cost and expense. It is anticipated that there
25 will be discovery argument in terms of document production and answers to questions.

1 What those arguments will be are yet to be determined. Plaintiff further disputes
2 Defendant OPP rendition of facts in this case as referenced below. Plaintiff refers the
3 Court to the Amended Complaint filed – which includes issues not addressed in
4 Defendants rendition of events. Plaintiff also disputes Defense self-imposed
5 characterization of itself as “Local Lodge.” Defendant Local Union Lodge legally
6 classifies itself as an “Association” and not as a “Local Lodge” with the Department of
7 Revenue.

8
9 IV. Defendants’ Position:

10 (1) OPP/Dwight Midles and Mel Matson: As to OPP, plaintiff alleges that she was
11 exposed to a sexually pervasive and hostile working environment causing her to resign
12 her employment. Plaintiff contends her resignation was a constructive discharge.
13 Plaintiff contends that she notified her supervisors of the pervasive and hostile work
14 environment but her complaints were not remedied. OPP and defendants Midles and
15 Matson dispute plaintiff’s contentions. Plaintiff alleges the individual defendants,
16 including defendants Midles and Matson, intentionally inflicted emotional distress upon
17 her and also committed the tort of outrage. Defendants Midles and Matson dispute
18 plaintiff’s contentions. The discovery relating to plaintiff’s allegations against OPP and
19 defendants Midles and Matson should not be particularly complex. Depending on the
20 information supplied by plaintiff in her initial disclosures, which are due on February 2,
21 2008, these defendants do not believe that discovery will be particularly protracted or
22 complex. Most, if not all, of her claims against these defendants will be the subject of
23 summary judgment motions.

24 (2) Lodge W-38: This is a simple case concerning Local Lodge and should be
25 quickly resolved in favor of Local Lodge by Summary Judgment since there is no breach

1 of the duty of fair representation based upon controlling decisions of the United States
2 Supreme Court.

3 (3) Defendants Sean Scupine, Shane Scupine, Ray Doyle, Robert Pierson and Brandon
4 Thompson: The allegations relating to these defendants are not complex.

5
6 (4) Defendant Randy Ward: The allegations relating to the Defendant, Randy Ward
7 are simple and primarily factual.

8 **4. What is the status of the case regarding hearings, motions and discovery?**

9 A. Plaintiff's Position: There is no dispute that all Defendants have been properly
10 served in this litigation. Nor is there dispute that all Defendants have appeared and
11 identified themselves as to their proper name spellings. Plaintiff is drafting a Second
12 Amended Complaint to make corrections, make it conform to new removed jurisdictional
13 setting, and to make any additional modifications necessary after initial disclosures are
14 properly provided. Regardless of this, the litigation posture in this matter is especially
15 contentious. This litigation will likely be the subject of numerous written motions. The
16 issue of the validity and need to respond to Plaintiff's original discovery to Olympic
17 Panel has been in dispute.

18 B. Defendants' Position: Plaintiff has submitted and received initial responses to
19 discovery requests from OPP. OPP has indicated it will supplement its responses no later
20 than January 21, 2008. No other discovery has been initiated by any other party.

21 **5. Should this matter be referred to a Special Master in discovery?**

22 A. Plaintiff's Position: It is possible that a special master may need to be sought in
23 this litigation. A protective order to address sequence and timing of discovery may need
24 to be issued.

25 B. Defendants' Position: Defendants do not believe that any portion of this case

should be referred to a Special Master pursuant to FRCP 53.

6. Appropriateness of this matter for mediation?

A. Plaintiff's Position: This matter is appropriate to attempt to mediate. Plaintiff objects to requests by Union Association to limit discovery as to itself and contends that such a position should not serve as a barrier to good faith mediation with a skilled mediator who will not let such a process develop into nothing more than a means for discovery.

B. Defendants' Position: Defendants agree this case would be appropriate, if necessary, for mediation under Rule 39.1 after the completion of discovery, i.e., 60 to 90 days before trial. Local Lodge is opposed to any mediation involving Local Lodge until after the court rules on Local Lodge's Summary Judgment Motion.

7. Referral of this matter to U.S. Magistrate.

A. Plaintiff's Position: Defendants position is an agreed upon position by Plaintiff at this time.

B. Defendants' Position: Defendants do not consent to the referral of this matter to a U.S. Magistrate.

8. On what day will the case be ready for trial considering Local Rule 16 deadlines?

A. Plaintiff's Position: Plaintiff has medical issues. A review of asserted dates by Defendants herein establish that defendants essentially leave little other than December 2008 as a trial month for this litigation, but also indicate discovery cut off should be February of 2009. Plaintiff anticipates being ready for trial any time after January 31, 2009. The representation of "four month" unavailability is not a proper characterization. Counsel offered to engage in discovery in advance of this deadline for submission

because of a busy calender this year during the first four months of the year. Defendants would not engage in early conference or agree to begin discovery with full knowledge of this issue.

B. Defendants' Position: Given plaintiff's counsel's four month period of unavailability for discovery, defendants will be ready for trial anytime after June 1, 2009.

(1) Defendant Sean Scupine, Shane Scupine, Ray Doyle and Robert Pierson: Defendants, Sean Scupine, Shane Scupine, Ray Doyle, Robert Pierson and Brandon Thompson will be available for trial after 1 January 2009.

9. Is the trial to be a jury or non-jury trial?

A. Plaintiff's Position: This is a jury trial.

B. Defendants' Position: Defendants agree this is a jury trial.

10. Number of trial days required?

A. Plaintiff's Position: Plaintiff asserts that this case will take between seven and nine days to try unless plaintiff requests the Court consolidate this matter and the Court grants such a request.

B. Defendants' Position: Defendants anticipate that if necessary, 15 trial days will be required.

11. Trial Counsel:

Counsel for Plaintiff: John Bonin Bonin & Cook, P.S. P.O. Box 783 Shelton, WA 98584 (360) 427-7474 jbonin@hctc.com	Counsel for Defendants Olympic Panel Products, Dwight Midles & Mel Matson: Lewis L. Ellsworth Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim P.O. Box 1157 Tacoma, WA 98401-1157 (253) 620-6505 lellsworth@gth-law.com
Counsel for Defendant International Association of Machinists Woodworkers	Counsel for Defendants Sean Scupine, Shane Scupine, Ray Doyle, and Robert Pierson

Local Lodge W-38: Don S. Willner 630 Sunnyside Road Trout Lake, WA 98650 (509) 395-2000 donswillner@aol.com	Michael Hanbey Attorney at Law P.O. Box 2575 Olympia, WA 98507 (360) 570-1636 hanbeyps@olywa.net
Counsel for Defendant Randy Ward: Rick Cordes Cordes Brandt, PLLC 2625 B Parkmont Lane SW Olympia, WA 98502 (360) 357-7793 rick@cordesbrandt.com	Counsel for Brandon Thompson Pro Se 849 Avalon Court Lacey, WA 98513 Telephone number not disclosed by withdrawing attorney e-mail contact not disclosed by withdrawing attorney

12. Trial Date availability?

A. Plaintiff's Position: Defendants appear to leave December of 2008 open in the year 2008. Plaintiff would not be ready in December of 2008. For this trial and the time involved to engage in discovery issues and to prepare for presentation, Plaintiff's counsel would agree that a trial setting on February 1, 2009 or thereafter would be most appropriate. Plaintiff Grinenko however notifies the Court and counsel herein of her own current and personal dates of unavailability for anything connected with this case as follows: February 14, March 29- April 6, June 6 – July 8, 2008. Plaintiff counsel's schedule varies tremendously and counsel respectfully requests that Defendants make telephonic and written requests for dates of availability on discovery and motion related matters in a fair and reasonable fashion. Plaintiff further requests that Defendants generate schedules in discovery that do not intentionally overlap and burden plaintiff – a person defendants have been advised is pregnant at time prior to submission of this material.

B. Defendants' Position:

(1) OPP/Dwight Midles and Mel Matson: Counsel for these defendants is unavailable in 2008 on the following dates: June 14 through July 18; August 4 through August 8; October 20 through November 14 (trial in U.S. District Court/Judge Martinez, followed immediately by a trial in Kitsap County Superior Court).

(2) Local Lodge: If Local Lodge is not dismissed from the case on Summary Judgment, the attorney for Local Lodge is unavailable July 15 – August 15, 2008.

(3) Defendants Sean Scupine, Shane Scupine, Ray Doyle, Robert Pierson and Brandon Thompson: Counsel for these defendants has the following unavailable dates: 11-14 February (Jury Trial- Thurston County); 25 Feb – 6 March (Jury Trial – Thurston County); 10-13 March (Jury Trial- Mason County); 17-20 March 2008 (Jury Trial 24-26 (Trial- Pierce County); 14-23 April (Jury Trial- Thurston County); 5-13 May (Jury Trial – Thurston County); 12-22 May (Jury Trial- Thurston County); 2-10 June (Jury Trial- US District Court- Tacoma); 23-26 June (Jury Trial- US District Court – Seattle); 13-16 October (Jury Trial- Thurston County); 20-28 October (Jury Trial- Thurston County); 3-6 November (Jury Trial- Thurston County); 10-30 November (vacation); 26-29 January 2009 (Jury Trial- Thurston County).

(4) Defendant Randy Ward: Counsel for the Defendant Ward, for a trial of this length would not be available prior to October 2008.

13. **Suggestions for shortening or simplifying trial?**

A. Plaintiff's Position: Plaintiff will request stipulations on admissibility, evidence foundation issues and on matters needing court attention before bringing matters of import to Plaintiff before the Court.

B. Defendants' Position: Defendants have no suggestions for shortening or simplifying the trial. Defendants believe that many of the plaintiff's claims will be subject to summary judgment after appropriate discovery is conducted.

14. **Will any aspect of this case required bifurcation?**

A. Plaintiff's Position: Individual defendants joined in removal of this action and indicate no need to bi-furcate. However, in this document they indicate a potential desire for remand to state Court as to their issues. Plaintiff's position on bi-furcation is that if individual defendants want bifurcation and/or take action (e.g. Bankruptcy) that bifurcation may be proper, but at present no need is observed to exist.

B. Defendants' Position: Defendants do not believe this case should be bifurcated in any way.

15. **Whether all parties have been served and whether additional parties may be named.**

A. Plaintiff's Position: All defendants have been served. Additional parties are not anticipated to be named but discovery continues. Deadline to join additional parties should be near discovery cut off in light of the expectation of a protracted series of discovery battles.

B. Defendants' Position: Defendants do not believe that any additional parties will be joined and therefore a deadline for joining additional parties in this matter is not applicable.

16. **Proposed Discovery Plan.**

A. Plaintiff's Position: The FRCP conference was held on January 17 and documents were circulated. Initial disclosures were filed on the Court Deadline of January 31, 2008 by Plaintiff. Defendant OPP provided an un-filed fax copy of initial disclosure on the same date. Defendant Union Association provided partial initial disclosures on the same date. Individual Defendants other than Brandon Thompson and other than Mel Matson, Dwight Midles and Eric Dobson filed initial disclosures after Court Deadline. Brandon Thompson has not filed initial disclosures. Brandon

Thompson has not responded to request for input on this document. Plaintiff's position is that discovery is needed. Plaintiff objects to Union representations of shortened discovery schedule needs. Plaintiff requests cooperation in sequence and timing of discovery. Plaintiff requests that if Defendant Union Association wants to petition the Court for shortened discovery that it do so properly so argument can be had. Plaintiff will stipulate to argument on the topic following issuance and response to Plaintiff's discovery to Union Association. Plaintiff will object to any pre-textual motions filed intended to cause this "shortened schedule" to happen without argument on the merits as to why it should or should not be allowed. Plaintiff does not stipulate to either paragraphs 7 or 8 of Defendant Union Association's position and wants discovery rights consistent with Court Rules and Defendant positions that all discovery prior to removal is "invalid" as Defense has relied upon this assertion for many months prior to what now appears to be a change of heart.

B. Defendants' Position: other than Local Lodge

(1) The FRCP 26(f) conference was held on January 17, 2008 and initial disclosures were exchanged on or before January 31, 2008.

(2) Discovery will be needed on the issues of liability and damage.

(3) Defendants agree to use the Federal Rules of Civil Procedure for the exchange of discovery documents and conducting depositions with the possible exception of permitting more than ten deponents per party.

(4) Defendants agree to attempt to cooperate on issues regarding discovery.

(5) Defendants agree that no other orders should be entered by the Court under FRCP 26(c) or under Local Rule 16(b) and (c).

(6) Defendants expect that discovery will be completed no later than February 2, 2009. Defendants request that the discovery cutoff date be set 120 days prior to trial.

1 Defendants will comply with the federal rules with respect to expert disclosures.

2 (7) Local Lodge's position:

3 Local Lodge requests a limited discovery order from the court which
4 provides that Local Lodge will take the deposition of Plaintiff at an early date agreed to
5 by the parties, or in the absence of agreement, set by the court. Local Lodge will then file
6 a Summary Judgment Motion that there has been no breach of the duty of fair
7 representation based upon controlling decisions of the United States Supreme Court.
8 Thereafter, Plaintiff may take a limited number of depositions as agreed by the parties, or
9 if no agreement, as determined by court order, which deal solely with the issues raised in
10 the Summary Judgment Motion. Thereafter, Plaintiff may file its response, Local Lodge
11 file its reply, and the Motion be set for oral argument. If summary Judgment is not
12 granted, limited further discovery may be needed by Plaintiff and Local Lodge.

13 (8) Defendants Sean Scupine, Shane Scupine, Ray Doyle, Robert Pierson, and Brandon
14 Thompson: If the Court authorizes the relief requested by Defendant Lodge, these
15 defendants reserve the right to seek remand of the cause of action to the Superior Court
16 for Mason County. These defendants do not object to the relief proposed by Defendant
17 Lodge in sub-paragraph (7) above.

18
19 **17. Pretrial Statements and Pretrial Orders.**

20 A. Plaintiff's Position: Plaintiff has no position on this issue.

21 B. Defendants' Position: Defendants agree that the pretrial statements and pretrial
22 orders called for by Local Rule CR 16(3)(h)(i) and (l) and 16.1 should not be dispensed
23 with in whole or in part for the sake of economy (the Court will make the final
24 determination).
25

1 Respectfully submitted this 7th day of February, 2008.

2 Presented jointly by:

3 BONIN & COOK
4

5 By: /s/john bonin
6 JOHN R. BONIN, WSBA #25760
7 Attorney for Plaintiff

8 GORDON, THOMAS, HONEYWELL,
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